

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 686 OF 2007
IN
CRIMINAL APPEAL NO. 563 OF 2007

Mohammed Aslam Abdulla Memom ..Applicant
(Org.Accd.No.3)
Vs.

The State of Maharashtra ..Respondent
Mr. Sudeep Pasbola and Mr. Samir Pradhan for
applicant.
Ms. S.V. Gajre, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : October 03, 2007.

P.C.:

1. Heard Mr. Pasbola and Mr. Pradhan the learned counsel for the applicant - original accused no.3. He has been convicted and sentenced for the offences punishable under Section 489-B read with Section 120-B & in the alternative read with Section 34 of IPC and Section 489-C read with Section 120-B & in the alternative read with Section 34 of IPC. He has been sentenced to suffer RI for 10 years on the

first count and RI for 7 years on the second count with Rs.5,00,000/- as the fine for the first offence and Rs.1,00,000/- as the fine for the second offence. Fine amount has not been deposited. In default of payment of fine amount further RI for one year has been directed in both the charges and thus the total period of sentence may come to 11 years and 8 years respectively.

2. It has been contended by the learned counsel for the applicant that he was taken in custody on 28/7/2000 and he remained to be an under trial prisoner till 6/9/2006 on which date he was released on bail. However, on 6/2/2007 he surrendered and thus has undergone about 6 and 1/2 years sentence. It is further submitted that the applicant has already undergone the sentence of more than half the period of the total sentence and by relying upon the order dated 7/8/2007 passed in Criminal Application No.763 of 2007 in Criminal Appeal No. 616 of 2007 the learned counsel prayed for the applicant being released on bail on that ground alone. In the order dated 7/8/2007 I had referred to the order passed by this

court in the case of Uday Mohanlal Acharya vs. The State of Maharashtra [Criminal Application No.4297 of 2005 in Criminal Appeal No. 389 of 2002] and also the order passed in the case of Nazim Hasan Shamsh Zoha Rizvi vs. The State of Maharashtra [Criminal Application No. 5181 of 2003 in Criminal Appeal No. 1343 of 2003]. The order passed in Uday Mohan Acharya's case was confirmed by the Apex Court and the jail period already undergone was 3/4th of the sentence period, whereas in the case of Nazim Rizvi the jail period was three years which was half of the highest sentence awarded by the Special Court.

3. I have also noted that in Criminal Appeal No. 563 of 2007 the paper book is not yet ready and the appeal is not likely to be listed for final hearing in the near future or at least about one year from now and, therefore, I deem it appropriate that the applicant is given the benefit of the orders passed by this court in the case of Nazim Rizvi and Uday Mohan Acharya.

4. Hence the application is allowed and it is

directed that the applicant shall be released on bail, if not required in any other case, on the same terms as before the trial court but on fresh bonds and with a further condition that the applicant shall continue to report to the concerned police station i.e. Oshiwara Police Station at Mumbai once in every week till Criminal Appeal No.563 of 2007 is heard and decided by this court and he shall not leave Mumbai City during this period unless permitted by the Senior Inspector of the said Police Station by a written order.

(B.H. Marlapalle, J.)